

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DAIMLER TRUCKS NORTH AMERICA LLC;	*	
WESTERN STAR TRUCK SALES, INC.; AND	*	CIVIL ACTION NO. 5:15-cv-00030
DETROIT DIESEL CORPORATION	*	
Plaintiffs	*	
	*	
vs.	*	
	*	JUDGE: David C. Bramlette, III
MCCOMB DIESEL, INC. AND	*	
FRANCISCO JOSE MONTALVO	*	MAGISTRATE JUDGE:
Defendants	*	Michael T. Parker
	*	

ORDER AND REASONS

THIS MATTER came before the Court on Daimler Trucks North America LLC and Western Star Truck Sales, Inc.’s (“Plaintiffs”) Motion for Summary Judgment Regarding the Right of First Refusal [Rec. Doc. 91]. Having considered the Motion, the Memoranda, the evidence, the argument of counsel, and the law, the Court finds as follows:

1. Plaintiffs and Defendant, McComb Diesel, Inc. (“McComb Diesel”) are parties to a contract entitled “Western Star Trucks Dealer Sales and Service Agreement” (“Agreement”). The Agreement’s clear purpose is to provide for the sale and service of Western Star vehicles. The Agreement provides for a right of first refusal, granting Plaintiffs the right to purchase McComb Diesel’s “dealership assets or stock” in the event McComb Diesel desires to sell same. This is consistent with the clear purpose of the Agreement.
2. The Court finds the provision of the Agreement concerning the scope of Plaintiffs’ right of first refusal to be clear and unambiguous such that the contracting parties’ intent can be discerned from the four corners of the Agreement. The Court finds that the right of

first refusal covers McComb Diesel's dealership business only. The Agreement's clear purpose, as stated in the Agreement itself, is to permit McComb Diesel to sell and service Western Star vehicles. The Agreement does not contemplate granting Plaintiffs a right of first refusal over property not contemplated by the Agreement.

3. If the Court finds that Plaintiffs' obligation to exercise or waive its right of first refusal were triggered by the Asset Purchase Agreement between McComb Diesel, Harvest Haul, Inc., Fiber Plus, LLC, Magnolia Motors, and Old River of McComb, LLC, Plaintiffs would be required either to purchase several assets not covered by its right of first refusal, or to waive its bargained-for property right. The Court declines to adopt such a rule, which may permit a creative property owner to expand the scope of a right of first refusal *ad infinitum* such that a rightholder's right of first refusal would be effectively rendered a nullity. The Court instead finds that the APA did not trigger Plaintiffs' obligation to exercise or waive its right of first refusal. Oral argument was requested and was granted, and on the 17th day of February, 2016, at the Federal Courthouse at Natchez, Mississippi a hearing was held and the parties made their respective presentations. In the event of an appeal, a transcript of this hearing is available.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

1. Daimler Trucks North America LLC and Western Star Truck Sales, Inc.'s Motion for Summary Judgment Regarding the Right of First Refusal [Rec. Doc. 91] is **GRANTED**.
2. Daimler Trucks North America LLC and Western Star Truck Sales, Inc.'s prayer for a Declaratory Judgment pursuant to 28 U.S.C. § 2201, et seq. is **GRANTED**, and the Court

enters a Declaratory Judgment that Daimler Trucks North America LLC and Western Star Truck Sales, Inc.'s obligation to exercise or waive their right of first refusal was not triggered by the October 31, 2014 Asset Purchase Agreement.

3. Daimler Trucks North America LLC and Western Star Truck Sales, Inc.'s prayer for an injunction enjoining McComb Diesel, Inc. from proceeding with the sale contemplated by the October 31, 2014 Asset Purchase Agreement is **GRANTED**, and the Court enters an injunction preventing McComb Diesel, Inc. and/or Francisco Jose Montalvo from closing on the sale contemplated by the Asset Purchase Agreement.

Thus, done and signed at Natchez, Mississippi, this 22nd day of March, 2016

BY THE COURT:

s/David Bramlette
HON. DAVID C. BRAMLETTE, III
U.S. DISTRICT COURT JUDGE